IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2163 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER,
ROADS & BUILDING DEPARTMENT (PANCHAYAT), AMRELI

Versus

JAYANT SHAMBUBHAI PATHAR & ORS.

Appearance:
1. Special Civil Application No. 2163 of 2001
MR GM JOSHI for Petitioner
RULE SERVED for Respondent No. 1
MR ANAND L SHARMA for Respondent Nos. 2-3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/02/2003

ORAL JUDGEMENT

1. The present petition is filed by the Executive Engineer, Road & Building Department (Panchayat), District: Amreli, challenging the judgement and award dated 15th September, 2000 passed by the learned Judge of the Labour Court, Amreli in Reference Case No.311 of 1998

[Old Reference Case No.792 of 1993 (Bhavnagar)], whereby the learned Judge was pleased to quash and set aside the oral order dismissing the services of the respondents and ordered reinstatement of Jayant Shambhubhai Pathar as daily wager mechanic with effect from 3/8/1993, Abdul Hamid Majidbhai Qureshi as mechanic daily wager with effect from 1/8/193 and Hanifbhai Jamalbhai Qureshi as daily wager chowkidar with effect from 31/7/1993, with continuity of service at their original posts without back-wages, only as daily wagers.

2. Mr.G.M.Joshi, learned Advocate for the petitioner, invited the attention to the contents of paragraph 7 of the judgement and award wherein the learned Judge has relied upon the sole deposition of Shri Abdul Majidbhai Qureshi at Exh.17. The only ground on which the award is passed is that, the institution/establishment did not produce any documentary or oral evidence before the Court. Hence, the learned Judge observed that he has no reason to disbelieve the deposition of the witness, Abdul Majidbhai Qureshi. The learned Judge has discussed the deposition wherein it is stated that Qureshi Abdul Hamid Majidbhai's services were terminated with effect from 31/07/1993, Jayantbhai Shambhubhai Pathar's services were terminated with effect from 3/8/1993 and Hanifbhai Jamalbhai Qureshi's services were terminated with effect from 31/07/1993. The witness has also deposed that Jayant Shambhubhai Pathar was in continuous service from 1/9/1992 to 3/8/1993, whereas Abdul Hamid Majidbhai Qureshi was in continuous service from 3/7/1991 to 1/8/1993 and Hanifbhai Jamalbhai Qureshi was in continuous service as a daily wager from 1/1/1993 to 31/7/1993.

3. Even if the deposition of the witness is taken at the face value, the applicant, Hanifbhai Jamalbhai Qureshi is stated to have worked only from 1/1/1993 to 31/07/1993. Even assuming that he worked for all the days without there being any public holiday or weekly off, then also, the total period for which he worked comes to 7 months, that is, short of 240 days. Still, however, the learned Judge has passed the order of reinstatement for all the three workmen with continuity of service. This speaks for itself and shows the extent of application of mind on the part of the learned Judge has taken place.

4. Though the respondent no.1 is served at the address where he is at present serving, that is, with the S.T. Corporation, he has not cared to cause any appearance before this Court.

5. Mr.A.L.Sharma, learned Advocate appearing for respondent nos.2 and 3, submitted that as the establishment/institution remained negligent in not producing any evidence at the time of hearing before the Labour Court, the learned Judge was right in accepting the deposition of the witness and passing the award on that basis. He submitted that the judgement and award does not require any interference at the hands of this Court.

6. The submissions of Mr.A.L.Sharma, the learned Advocate, have no merits inasmuch as even if the deposition of Qureshi Abdul Hamid Majidbhai, Exh.17, is accepted in toto, as discussed herein above, it does not make out a case for order of reinstatement of Hanifbhai Jamalbhai Qureshi, who has worked from 1/1/1993 to 31/07/1993. The learned Judge ought to have taken a note of the fact that there is always an impersonal approach on the part of the Government servants, more particularly, in the matter of defending the legal cases of the establishment/institution.

7. In view of the aforesaid discussion, the present petition is allowed. The judgement and award dated 15th September, 1990 passed by the Labour Court, Amreli in Reference Case No.311 of 1998 [Old Reference Case No.792 of 1993 (Bhavnagar)] is hereby quashed and set aside. However, in the interest of justice, the matter is remanded to the Labour Court wherein it will be open for both the parties to lead necessary evidence to contest the matter. Taking into consideration that the matter is old enough, the learned Judge of the Labour Court is directed to give priority to the matter and finish the same at the earliest, preferably within 10 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent. No order as to costs.

(Ravi R. Tripathi, J.)
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